



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA-2020-0862]

### **COVID-19 Related Relief Concerning International Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2022 Scheduling Season**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed extension of a limited, conditional waiver of the minimum slot usage requirement for international operations only.

**SUMMARY:** The FAA proposes to extend through October 29, 2022, the Coronavirus (COVID-19)-related limited, conditional waiver of the minimum slot usage requirement at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) that the FAA has already made available through March 26, 2022, for international operations only. Similarly, the FAA proposes to extend through October 29, 2022, its COVID-19-related limited, conditional policy for prioritizing flights canceled at designated International Air Transport Association (IATA) Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season, for international operations only. These IATA Level 2 airports include Chicago O'Hare International Airport (ORD), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO). This relief would be limited to slots and approved operating times used by any carrier for international operations only, through October 29, 2022, and would be subject to the same terms and

conditions, that the FAA has already applied to the relief that remains available through March 26, 2022.

**DATES:** Submit comments on or before **[INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit written views and supporting data by email to the Slot Administration Office at *9-FAA-Slot-Policy@faa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Al Meilus, Manager, Slot Administration, AJR-G, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone (202) 267-2822; email *Al.Meilus@faa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On March 16, 2020, the FAA granted a limited waiver of the minimum slot usage requirements<sup>1</sup> to carriers operating at all slot-controlled airports in the United States (DCA, JFK, and LGA)<sup>2</sup> and related relief to carriers operating at designated IATA Level 2 airports in the United States (EWR, LAX, ORD, SFO) due to the extraordinary impacts on the demand for air travel resulting from the COVID-19 pandemic.<sup>3</sup> Since the initial slot usage waiver and related relief was provided, the FAA has taken action to extend the relief provided on four occasions subject to certain substantive changes, including the addition of conditions, as the COVID-19 situation continued to evolve.<sup>4</sup> The most recent limited, conditional extension of COVID-19-

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<sup>1</sup> The FAA has authority for developing “plans and policy for the use of the navigable airspace” and for assigning “by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” 49 U.S.C. § 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR § 93.227 at DCA and under the authority of Orders at JFK and LGA. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

<sup>2</sup> Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, the FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. *See* FN 1. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018); the April 17, 2020, notice (85 FR 21500); the October 7, 2020, notice (85 FR 63335); the January 14, 2021, Summer 2021 FAA Policy Statement (Docket No. FAA-2020-0862-0302); and, the October 20, 2021, notice (86 FR 58134), extends to all allocated slots, including slots allocated by exemption.

<sup>3</sup> Notice of Limited Waiver of the Slot Usage Requirement, 85 FR 15018 (Mar. 16, 2020).

related relief was issued by the FAA on October 18, 2021, and is due to expire on March 27, 2022.<sup>5</sup>

### **Current COVID-19 Situation**

Since FAA’s notice published October 20, 2021, granting a limited, conditional extension of COVID-19-related relief for international operations only at slot-controlled airports and IATA Level 2 airports in the United States, COVID-19 has continued to cause disruption globally, and the timeline for recovery from this global pandemic remains uncertain. The World Health Organization (WHO) reports COVID-19 cases in more than 200 countries, areas, and territories worldwide.<sup>6</sup> For the week ending February 20, 2022, the WHO reported over 12 million new COVID-19 cases and over 67,000 new deaths, bringing the cumulative total to more than 422 million confirmed COVID-19 cases and over 5.8 million deaths globally since the start of the COVID-19 pandemic.<sup>7</sup>

The WHO reports that it is monitoring multiple variants globally; currently, the WHO has classified five different variants as “variants of concern” and two different variants as “variants of interest.”<sup>8</sup> The Centers for Disease Control and Prevention (CDC) is monitoring all variants of COVID-19 in the United States.<sup>9</sup> The CDC has listed the Omicron and Delta variants as variants

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<sup>4</sup> Notice of Extension of Limited Waiver of the Minimum Slot Usage Requirement, 85 FR 21500 (Apr. 17, 2020); Extension of Limited Waiver of the Minimum Slot Usage Requirement, 85 FR 63335 (Oct. 7, 2020); FAA Policy Statement: Limited, Conditional Extension of COVID-19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA-2020-0862-0302); and Extension of Limited, Conditional Waiver of the Minimum Slot Usage Requirement for International Operations Only, 86 FR 58134 (Oct. 20, 2021).

<sup>5</sup> Extension of limited, conditional waiver of the minimum slot usage requirement for international operations only, 86 FR 58134 (Oct. 20, 2021).

<sup>6</sup> <https://covid19.who.int/table>

<sup>7</sup> COVID-19 weekly epidemiological update, February 22, 2022, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports>. *See also* <https://covid19.who.int/> for WHO COVID-19 Dashboard with the most current number of cases reported.

<sup>8</sup> <https://www.who.int/en/activities/tracking-SARS-CoV-2-variants/>

<sup>9</sup> Center for Disease Control (CDC), What You Need To Know About Variants, available at: <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html>

of concern.<sup>10</sup> The CDC reports that all Food and Drug Administration (FDA)-approved or authorized vaccines are expected to be effective against severe illness, hospitalizations, and deaths from the Omicron variant of COVID-19.<sup>11</sup>

Currently, three COVID-19 vaccines have been authorized for emergency use or approved by the FDA.<sup>12</sup> As of February 24, 2022, 64.8 percent of Americans are fully vaccinated, and 76.3 percent of Americans have received at least one dose.<sup>13</sup> Due to substantial efforts to increase vaccination rates across the globe, the United States moved away from a country-by-country restriction previously applied during the COVID-19 pandemic and adopted an air travel policy that relies primarily on vaccination to advance the safe resumption of international air travel to the United States.<sup>14</sup> When the FAA extended COVID-19-related relief for international operations only by notice published October 20, 2021, the number of confirmed new cases of COVID-19 in the U.S. for the week of October 18, 2021, based on WHO data, was 509,330.<sup>15</sup> On December 1, 2021, the first case attributable to the Omicron variant was identified in the United States.<sup>16</sup> For the week of February 14, 2022, which is the most recent week for which data is available, the WHO reports 716,884 confirmed new cases in the United States.<sup>17</sup> For the week ending on February 19, 2022, the CDC Nowcast model estimates that Omicron accounts for 99 percent of total cases.<sup>18</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* See also <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/>

<sup>12</sup> <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>

<sup>13</sup> CDC, COVID-19 Vaccinations in the United States, updated February 24, 2022, available at: <https://covid.cdc.gov/covid-data-tracker/#vaccinations>

<sup>14</sup> *Id.* See also <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/25/a-proclamation-on-advancing-the-safe-resumption-of-global-travel-during-the-covid-19-pandemic/>

<sup>15</sup> Notice of Extension of Limited, Conditional Waiver of the Minimum Slot Usage Requirement for International Operations Only, 86 FR 58134 (Oct. 20, 2021). See also <https://covid19.who.int/region/amro/country/us>

<sup>16</sup> <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-omicron-variant.html>

<sup>17</sup> <https://covid19.who.int/region/amro/country/us>.

## Standard Applicable to This Waiver Proceeding

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in FAA's initial decision granting relief due to COVID-19 impacts.<sup>19</sup> At JFK and LGA, each slot must be used at least 80 percent of the time.<sup>20</sup> Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.<sup>21</sup>

At DCA, any slot not used at least 80 percent of the time over a two-month period also will be recalled by the FAA.<sup>22</sup> The FAA may waive this minimum usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding carrier and which exists for a period of nine or more days.<sup>23</sup>

When making decisions concerning historical rights to allocated slots, including whether to grant a waiver of the usage requirement, the FAA seeks to ensure the efficient use of valuable aviation infrastructure while maximizing the benefits to airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancellations under all but

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<sup>18</sup> United States: Feb. 13, 2022 – Feb. 19, 2022 NOWCAST. <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>.

<sup>19</sup> See 85 FR 15018 (Mar. 16, 2020).

<sup>20</sup> Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 47065 at 58255 (Sep. 18, 2020).

<sup>21</sup> At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season. See JFK Order, 85 FR at 58260. At LGA, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. See LGA Order, 85 FR at 58257.

<sup>22</sup> See 14 CFR 93.227(a).

<sup>23</sup> See 14 CFR 93.227(j).

the most unusual circumstances. Carriers proceed at risk if, at any time prior to a final decision, they make decisions in anticipation of the FAA granting a slot usage waiver.

### **Summary of Petitions from Stakeholder Concerning Continued COVID-19 Relief**

The FAA has received four petitions regarding COVID-related relief for the Summer 2022 season to date. The FAA received a petition from the International Air Transport Association (IATA), a joint petition from Airlines for America (A4A) and IATA, a joint petition from American Airlines (American), Delta Airlines (Delta), and United Airlines (United), and a joint petition from 31 global airlines, including Aer Lingus, Air Canada, Air China, Air Dolomiti, Air New Zealand, American Airlines, All Nippon Airways, Austrian Airlines, Avianca Airlines, Azul, British Airways, Brussels Airlines, Delta Air Lines, Edelweiss Air, Emirates, Eurowings, GOL, Iberia, KLM, Kuwait Airways, Lufthansa, Scandinavian Airlines, Singapore Airlines, Shenzhen Airlines, South African Airways, Swiss International Air Lines, Thai Airways, United Airlines, Virgin Atlantic, Virgin Australia, and WestJet Airlines.<sup>24</sup> All petitions received to date request further relief, for international operations only, through the end of the Summer 2022 scheduling season due to the ongoing COVID-19 impacts on demand for international air travel.

IATA petitions the FAA for continued relief for international operations, stating that relief for international traffic has “proven to be essential...considering government travel restrictions that have evolved as the virus has spread and mutated, including during the past weeks with the new Omicron variant.” IATA believes that without relief for international operations, “airlines would have been forced to operate services unjustified by demand to preserve historic rights to slots that are critical to future connectivity and the consumer choice. Further, IATA states that “air traffic remains hugely impacted by the COVID-19 crisis with international traffic remaining at approximately 21 percent of pre-COVID levels year to date.”

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<sup>24</sup> Copies of all petitions have been placed in the docket for this proceeding.

IATA notes that “the Worldwide Airport Slot Board (WASB) is recommending a framework for slot use alleviation measures for NS22 that balances the differing speeds of regional recovery with a gradual restoration of slot rules when appropriate for the particular market” and attached a copy of the WASB framework with its petition. Stopping short of expressly advocating for the adoption of the WASB framework in the United States, IATA asserts that within “the U.S. international market there are still many routes deeply impacted, which would warrant a level of series returns and a reduced use ratio.” Moreover, IATA states that “[f]or all markets, it is essential to have a robust set of justified reasons for non-use of slots (JNUS) to manage changes in the operating environment as the pandemic evolves.”

A4A and IATA submitted a joint petition requesting “a waiver of minimum usage rules for international operations at Level 2 and 3 airports and terminal facilities for the Summer 2022 season.” A4A and IATA state that “international demand has not recovered” and that “[b]ooking trends into spring and summer 2022 not only remain weak but slipped further since December due to the recent uptick in Omicron cases worldwide.” A4A and IATA note that “[t]he transpacific market, where many countries like Japan, South Korea, and China continue to impose entry bans for non-citizens, saw passenger volumes down more than 85% in December 2021, the peak of winter season.” In addition, A4A and IATA assert that “[a]n international waiver by the U.S. is needed to ensure that foreign countries provide a reciprocal waiver abroad.”

American, Delta, and United submitted a joint petition to “urgently request continued relief from standard international slot usage rules during the Northern Hemisphere summer 2022 season.” American, Delta, and United state that “[t]he COVID-19 pandemic continues to negatively impact worldwide air travel; the Omicron variant has caused governments to significantly restrict or control entry of passengers and airline crew members and unfortunately, the future remains unpredictable.” Attached to American, Delta, and United’s joint petition was a letter from leading international airlines to slot regulators around the world. The attached letter,

which included 31 international airlines (including American, Delta, and United), requests “continued relief from standard international slot usage rules during the Northern Hemisphere summer 2022 season.” The carriers assert that “[i]nternational slot relief is essential for the full summer season which runs from March 27 through October 29.”

### **Discussion of Proposal for Continued Relief for International Operations**

In consideration of the foregoing information, the petitions that the FAA has received, and the evolving and highly unpredictable situation globally with respect to ongoing impacts from COVID-19, the FAA proposes to extend, for international operations only, the current limited, conditional relief that the FAA has already made available through March 26, 2022, through the end of the Summer 2022 season on October 29, 2022.<sup>25</sup> This relief would be limited to slots and approved operating times used by carriers for international operations through October 29, 2022, and would be subject to the same terms and conditions that the FAA has applied to the relief already made available through March 26, 2022, which the FAA reiterates in this notice. International operations, for the purpose of this notice, are flights intended for operation between one of the U.S. slot-controlled or IATA Level 2 airports and any point in a foreign jurisdiction.

It is not the policy of the Department of Transportation (DOT) to use slot and Level 2 rules to reserve capacity for historic incumbent carriers until demand returns to predetermined levels. Instead, it is the policy of the Department to encourage high utilization of scarce public infrastructure. As previously stated, at some point in time, continuing waivers to preserve pre-COVID slot holdings may impede the ability of airports and airlines to provide services that benefit the overall national economy and make appropriate use of scarce public assets.

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<sup>25</sup> The FAA notes that for purposes of the relief proposed in this proceeding, Canadian carriers would be treated as foreign carriers.



Therefore, the FAA emphasizes that operators should not assume further relief on the basis of COVID-19 will be forthcoming beyond the end of the Summer 2022 scheduling season.

IATA reports in its petition that international flights globally are operating at approximately “21 percent of pre-COVID levels year to date.” As indicated in IATA’s petition, “[g]overnments’ reimposition of travel restrictions, regardless of vaccination status, in response to Omicron has led passengers to cancel or delay travel because of a legitimate fear they will be stranded, placed in quarantine, or subject to multiple and costly testing requirements. For much of international aviation, restrictions remain in place on both ends of the route which requires consumers to keep up with frequently changing policies that may impact their travel. For example, travellers [sic] have been challenged with the recent changes in testing requirements, regardless of vaccination status, as many foreign service providers are experiencing difficulty with test availability and results processing to meet the new requirements.”

The FAA agrees with IATA and the other petitioners. Based on global vaccination rates, changing infection rates and the threat of new virus strains, continued unpredictability of travel restrictions, and the disparity between demand for domestic air travel and demand for international air travel, extending the current limited, conditional waiver for international operations by all carriers, is reasonable. The FAA believes extending the limited, conditional slot usage waiver, for international operations only, through the Summer 2022 season would provide carriers with the flexibility to operate in the unpredictable international market and would support long term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States.

The FAA notes that A4A and IATA requested a “waiver of the minimum slot usage rules for international operations at Level 2 and 3 airports *and terminal facilities* for the Summer 2022 season.” (emphasis added). The FAA does not allocate or assign terminal resources at the airport facility. The FAA administers runway schedule limits under the Administrator’s authority to manage the efficient use of the national airspace system, and all requests concerning the use of

airport terminal facilities should be directed to the respective local airport sponsor or operating authority.<sup>26</sup>

The FAA recognizes that domestic carriers have a mix of both domestic and international operations, and therefore the agency intends to make this relief available for international operations that would have been operated in the Summer 2022 season, but for COVID-19 impacts on air travel demand. In other words, the FAA intends to provide this conditional relief to domestic carriers on a scale that is generally comparable to each carrier's pre-COVID level of international service. The FAA would generally evaluate any request for relief from U.S. carriers for the Summer 2022 scheduling season based on historical levels of operations to foreign points as demonstrated in published schedules from the Summer 2019 scheduling season. Domestic carriers seeking relief for a particular operation under the waiver would need to provide the FAA, if not readily apparent from FAA records and historic published schedule data, alternative supplemental information that predates this notice to demonstrate intent to use a slot or approved operating time for an international destination. The FAA would not accept evidence of intent to use a particular slot or approved operating time for an international flight during the Summer 2022 season if the information is dated after this notice is issued.

International operations eligible for a waiver under this proposal would be subject to all of the same conditions and policies made available in FAA's Winter 2021/2022 waiver, which remains in effect at slot-controlled, and IATA Level 2 airports in the United States for the Winter 2021/2022 season.<sup>27</sup> The FAA believes the conditions associated with the relief provided to date are generally comparable to the WASB package and remain necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately

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<sup>26</sup> See 49 U.S.C. 40103(b)

<sup>27</sup> Notice of Extension of Limited, Conditional Waiver of the Minimum Slot Usage Requirement for International Operations Only, 86 FR 58134 (Oct. 20, 2021).

tailored to reduce the potential to suppress flight operations for which demand exists. The conditions for relief at slot-controlled airports, which the FAA would apply to the relief proposed in this notice, include:

(1) all slots not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these slots on an *ad hoc* basis without historic precedence. However, slots operated as approved on a non-historic basis in Summer 2022 will be given priority over new demands for the same timings in the next equivalent season (Summer 2023) for use on a non-historic basis, subject to capacity availability and consistent with established rules and policies in effect in the United States.<sup>28,29</sup>

Foreign carriers seeking priority under this provision will be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature. Compliance with this condition is required for operations scheduled from March 27, 2022, through the duration of this relief; therefore, carriers must begin notifying the FAA of Winter returns by February 28, 2022<sup>30</sup>;

(2) the waiver does not apply to slots newly allocated for initial use during the Summer 2022 season. New allocations meeting minimum usage requirements remain eligible for historic precedence. The waiver does not apply to historic in-kind slots within any 30-minute or 60-minute time period, as applicable, in which a carrier seeks and obtains a similar new allocation (*i.e.*, arrival or departure, air carrier or commuter, if applicable); and,

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<sup>28</sup> Consistent with the FAA's waiver policy issued October 18, 2021, this priority would apply to slot or schedule requests for Summer 2023, which are comparable in timing, frequency, and duration to the non-historic *ad hoc* approvals made by the FAA for Summer 2022. This priority does not affect the historic precedence or priority of slot holders and carriers with schedule approvals, respectively, which meet the conditions of the waiver during Summer 2022 and seek to resume operating in Summer 2023. The FAA may consider this priority in the event that slots with historic precedence become available for permanent allocation by the FAA.

<sup>29</sup> Although the FAA is proposing to extend the four-week rolling return policy consistent with the Winter 2021/2022 waiver, any carrier returning full-season slots or schedule approvals at an airport outside the United States and associated with a route to the United States will generally be expected to similarly return the complementary full-season U.S. slot or schedule approval to the FAA for re-allocation on a non-historic or *ad hoc* basis.

<sup>30</sup> The FAA will consider pushing the initial date for required returns depending on the issuance date of the final decision.

(3) the waiver does not apply to slots newly transferred on an uneven basis (*i.e.*, via one-way slot transaction/lease) since October 15, 2020, for the duration of the transfer.<sup>31</sup> Slots transferred prior to this date may benefit from the waiver if all other conditions are met. Slots granted historic precedence for subsequent seasons based on this relief are not eligible for transfer if the slot holder ceases all operations at the airport.

In addition, as proposed, an exception may be granted to these conditions based on any government restriction that prevents or severely restricts travel to specific airports, destinations (including intermediate points), or countries for which the slot was held. This exception applies under extraordinary circumstances only in which a carrier is able to demonstrate that the ability to operate a particular flight or comply with the conditions of the proposed waiver is prevented or severely restricted due to an unpredictable official governmental action related to COVID-19. Official government actions that may qualify for this exception include—

- Government travel restrictions based on nationality, closed borders, government advisories related to COVID-19 that warn against all but essential travel, or complete bans on flights from/to certain countries or geographic areas.
- Government restrictions related to COVID-19 on the maximum number of arriving or departing flights and/or the number of passengers on a specific flight or through a specific airport.
- Government restrictions on movement or quarantine/isolation measures within the country or region where the airport or destination (including intermediate points) is located.
- Government-imposed closure of businesses essential to support aviation activities (*e.g.*, closure of hotels, ground handling suppliers, etc.).

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<sup>31</sup> Consistent with prior proceedings, the FAA does not propose to revise this condition to include a buffer period for new transfers to be completed and still benefit from this waiver. Therefore, this policy would remain in effect continuously from the initial effective date of October 16, 2020.

- Governmental restrictions on airline crew, including unreasonable entry requirements or unreasonable testing and/or quarantine measures.

This exception would continue to be administered by the FAA in coordination with the Office of the Secretary of Transportation (OST). The extraordinary circumstances exception in this slot usage relief would be limited to the scope of the relief otherwise proposed; U.S. carriers should not expect to rely on the extraordinary circumstances exception for relief for domestic operations.<sup>32</sup>

The conditions for COVID-19-related relief for prioritizing flights canceled at IATA Level 2 airports, for purposes of establishing a carrier's operational baseline in the next corresponding season, which the FAA would apply to the relief proposed in this notice include:

(1) All schedules as initially submitted by carriers and approved by the FAA and not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these times on an *ad hoc* basis without assurance of priority in the next corresponding season. However, schedules operated as approved on an *ad hoc* basis in Summer 2022 will be given priority over new demands for the same timings in the next equivalent season (Summer 2023) for use on an *ad hoc* basis, subject to capacity availability and consistent with established rules and policies in effect in the United States. Foreign carriers seeking priority under this provision would be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature. Compliance with this condition would be required for operations scheduled from March 27, 2022, through the duration of this relief; therefore carriers must begin notifying the FAA of Summer returns by February 28, 2022; and,

(2) The priority for FAA schedules approved for Summer 2022 does not apply to net-newly approved operations for initial use during the Summer 2022 season. New approved times

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<sup>32</sup> The FAA may consider individualized requests from U.S. carriers for domestic relief on a case-by-case basis consistent with the applicable waiver standard.

will remain eligible for priority consideration in Summer 2023 if actually operated in Summer 2022 according to established processes.

Consistent with the proposal for slot-controlled airports, limited exceptions may be granted from either or both of these conditions at Level 2 airports under extraordinary circumstances due to any government restriction that prevents or severely restricts travel to specific airports, destinations (including intermediate points), or countries for which the schedule approval was held, as discussed previously with respect to slot-controlled airports. If the exception is determined not to apply, carriers would be expected to meet the conditions for relief or operate consistent with standard expectations for the Level 2 environment. The extraordinary circumstances exception in this proposal would only apply within the scope of the relief otherwise provided by the waiver; U.S. carriers should not expect to rely on the extraordinary circumstances exception for relief related to domestic operations.

The FAA believes an extension of relief for international operations only, through October 29, 2022, is reasonable due to fluctuating travel restrictions and the ongoing economic and health impacts of COVID-19 internationally. The proposed relief is expected to provide carriers with flexibility during this unprecedented situation and to support the long-term viability of international operations at slot-controlled and IATA Level 2 airports in the United States.<sup>33</sup> Continuing relief for this additional period would be reasonable to mitigate the impacts on passenger demand for international air travel resulting from the spread of COVID-19 worldwide.

As of the date of issuance of this notice, COVID-19 continues to present a highly unusual and unpredictable condition for international operations that is beyond the control of carriers. The continuing impacts of COVID-19 on global aviation are dramatic and extraordinary, with an unprecedented decrease in passenger demand for international air travel globally. The ultimate

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<sup>33</sup> The FAA is responsible to develop plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. *See* 49 U.S.C. § 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR § 93.227 at DCA and under the authority of Orders at LGA and JFK. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

duration and severity of COVID-19 impacts on passenger demand for international air travel remain unclear. Even after the pandemic is contained, impacts on passenger demand for international air travel are likely to continue for some time.

If the FAA extends relief for international operations through October 29, 2022, as proposed, the FAA expects that foreign slot coordinators will provide reciprocal relief to U.S. carriers. To the extent that U.S. carriers fly to a foreign carrier's home jurisdiction and that home jurisdiction does not offer reciprocal relief to U.S. carriers, the FAA may determine not to grant a waiver to that foreign carrier. The FAA acknowledges that some foreign jurisdictions may opt to adopt more strict provisions in response to this proposal than they had otherwise planned. However, as previously explained, the FAA believes the conditions associated with the relief provided in this proposal are necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately tailored to reduce the potential for a long-term waiver to suppress flight operations for which demand exists. A foreign carrier seeking a waiver may wish to ensure that the responsible authority of the foreign carrier's home jurisdiction submits a statement by email to *ScheduleFiling@dot.gov* confirming reciprocal treatment of the slot holdings of U.S. carriers.

After receiving and reviewing comments, the FAA anticipates subsequently providing notice of its final decision.

Issued in Washington, DC, on February 25, 2022.

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